PRIVY COUNCIL

THE KING-EMPEROR

v.

DAHU RAUT.

[and three connected appeals]

P. C.*
1935

Feb. 5;
Mar. 1.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA].

Criminal Law—Procedure—Appeal from conviction and sentence—Reduction of sentence—Jurisdiction—Code of Criminal Procedure (Act V of 1898), ss. 421, 422, 423.

Under section 421 of the Code of Criminal Procedure, an appellate court can summarily dismiss an appeal from a conviction and sentence, only if it considers that there is no ground for interfering; where the appeal is not summarily dismissed, the court is bound, in order to dispose of the appeal either by a reduction of the sentence or otherwise, to comply with the provisions of section 422 as to notices, and those of section 423 as to sending for the record.

Appeals allowed; but reduced sentences to stand, the Crown desiring no order to the contrary.

Consolidated Appeal (No. 42 of 1934) from four orders of the High Court made in May and June, 1933.

The orders appealed from were made by Lort-Williams and McNair JJ. (1) upon petitions of appeal, under section 419 of the Code of Criminal Procedure, by which the respondents severally appealed against convictions and sentences ordered by a criminal court of first instance. In each case, when the petition was before the Court for the purposes of section 421 of the Code, and the prosecution not represented, the Court ordered a reduction of the sentence without the notices required by section 422 having been given, or the record sent for in accordance with section 423 of the Code.

The facts, the material sections of the Code, and the grounds upon which the learned Judges supported the

**Present* : Lord Tomlin, Lord Thankerton, Lord Russell of Killowen Sir Lancelot Sanderson and Sir Shadi Lal.

(1) (1933) I. L. R. 61 Calc. 155.

1935

The King-Emperor v. *Dahu Raut.*

orders appear from the judgment of the Judicial Committee.

Upon the application for special leave to appeal reference was made to observations in the judgment of the Board in *Reg.* v. *Bertrand* (1), in which the Crown successfully appealed by special leave upon a question of criminal procedure in New South Wales.

The Crown did not ask that there should be any interference with the reduced sentences.

Dunne K. C. (with him *Wallach*) for the Crown. When an appeal has not been summarily dismissed under section 421, it is imperatively provided by section 422 that the notices there prescribed are to be given, and by section 423 that the record is to be sent for if it is not already in Court. Those sections not having been complied with the orders were necessarily invalid. The revisional powers under section 439 could not be exercised at that stage, so as to exclude compliance with sections 422 and 423. The orders do not purport to have been made under section 439.

Abdul Majid (with him *Pringle*) for respondents. Having regard to the statement by Lort-Williams J., it is to be presumed that the Court was intending to exercise its powers under section 439, though the orders, as drawn up, omitted so to state. The requirements of sections 422 and 423 apply only to the appeal proceeding; a failure to comply with these does not exclude the revisional powers. Those powers are complementary to the powers in the appeal. For instance, a sentence can be enhanced in revision, although it cannot in the appeal. [Reference was made to cases mentioned in the judgment.]

The judgment of their Lordships was delivered by

LORD THANKERTON. These are consolidated appeals by special leave from four judgments of the High Court of Judicature at Fort William in Bengal, dated respectively the 29th May, the 29th May, the

(1) (1867) L. R. 1 P. C. 520, 530.

31st May and 7th June, 1933, which reduced the sentences passed on the respective respondents by the respective criminal courts of first instance on the 25th March, the 28th February, the 1st April and the 18th March, 1933.

In each case the respective respondents presented petitions of appeal to the High Court against both the conviction and the sentence, in exercise of the statutory right conferred on them by the Criminal Procedure Code, and the question in the present appeals is whether the orders of the High Court in each of the four cases, by which the sentences were reduced, were in conformity with the requirements of the Code. The Crown, as appellant, maintains that the orders were passed in violation of the statutory provisions and were beyond the jurisdiction of the High Court. The Crown desires to test the validity of the procedure adopted by the High Court, but does not ask for any interference with the reduction of the sentences made by these orders.

The sections of the Code which prescribe the procedure to be followed on presentation of a petition to the appellate court—in this instance, the High Court, —are as follows:—

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper appellate court.

421. (*1*) On receiving the petition and copy under section 419 or section 420, the appellate court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(*2*) Before dismissing an appeal under this section, the court may call for the record of the case, but shall not be bound to do so.

422. If the appellate court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and

1935

The King-Emperor v. *Dahu Raut.*

place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal; and, in cases of appeals under section 417, the appellate court shall cause a like notice to be given to the accused.

423. (*1*) The appellate court shall then send for the record of the case, if such record is not already in court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (*3*), not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) make any amendment or any consequential or incidental order that may be just or proper.

(*2*) Nothing herein contained shall authorise the court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

The following facts are common to each of the four cases:—No order was passed for summary dismissal of the appeal under section 421 (*1*); no notice was sent in terms of section 422 to the Legal Remembrancer, who is the officer appointed by the Local Government; the record was not sent for, as provided by section 423 (*1*); in each case an advocate was present on behalf of the accused, when the order was made by the High Court, but none was present on behalf of the Crown.

There were slight variations in the form of the orders. In the case of two of the orders it was stated that the appeal was admitted, while a third order stated "This appeal is allowed on the question of sentence only"; the fourth order is silent on this point. But all four orders are expressed as pronounced in exercise of the Court's criminal appellate jurisdiction.

On becoming aware of what had been done, the Deputy Legal Remembrancer approached the Acting Chief Justice (Sir Charu Chunder Ghose) on the matter, and on the 8th August, 1933, the latter passed an order in the following terms :—

> This matter was mentioned before me on Thursday last by the Deputy Legal Remembrancer. I have no jurisdiction whatsoever to interfere with the orders of the Division Bench. As Mr. Justice Lort-Williams has written to me as Chief Justice that he would like to look into the matter further, I direct that the two learned Judges referred to on this page (Lort-Williams and McNair JJ.) do form a Division Bench on Friday the 11th August at 4 p.m., when the Crown, if so advised, may mention the matter to the learned Judges.

Subsequently, the matter was mentioned before the two learned Judges named in the above order, when the Advocate-General, on behalf of the Crown, submitted that the orders in the four petitions of appeal were made without jurisdiction in respect that they had been passed without notice to the Legal Remembrancer and without sending for the records, that they were therefore null and of no effect, and that the petitions should be disposed of according to law. Lort-Williams J. passed one judgment in all four cases on the 29th August, 1933, and McNair J. delivered a separate judgment on the 31st August, 1933. Both of the learned Judges held that they could not review or alter their orders, except in regard to clerical errors within the meaning of section 369 of the Code, but they differed as to the existence of such errors in the orders in question, and no alteration or correction was made.

In explanation and justification of the orders, Lort-Williams J. stated as follows (1) :—

> It is complained that, as the appeals were admitted, the usual notices ought to have been given, and the appeals heard as provided in sections 422 and 423 of the Code of Criminal Procedure. In each of these orders as drawn up, there are clerical errors, and the form of the order is not in accordance with the judgment which I gave. This was overlooked when the orders were signed—what I said was, that there was no necessity to send for the record, and then I proceeded to give reasons why the sentences ought to be modified. According to my recollection, nothing was said about admitting or dismissing the appeal, but the effect of the order was that the appeal was

(1) (1933) I. L. R. 61 Calc. 155, 161.

1935

The King-Emperor v. *Dahu Raut.*

dismissed summarily under section 421 of the Code of Criminal Procedure and the sentence was varied under the Court's revisional powers, the proceedings having otherwise come to its knowledge within the meaning of section 439 of the Code.

This kind of order is not the usual one of admission or rejection of the appeal, and doubt seems to have arisen in the mind of the Bench Clerk, and in the office, about the correct form of the order. In future, the senior Judge of the Criminal Bench should be consulted, when any doubt or difficulty arises about the form of the judgment of the Court.

A number of similar orders were made by the Criminal Bench over which I presided two years ago, and no complaint was made by the Crown or by any one. This form of order is convenient and useful, and is intended to save unnecessary waste of time, labour, and expense, which is a matter not to be lightly disregarded in these difficult days. Where the Court is satisfied that the conviction was justified, but thinks that there may be grounds for reduction of sentence, it will generally invite the Crown and the appellant, or either of them to furnish information in order to assist the Court to arrive at a decision. In such a case, the practice is to admit the appeal on the question of sentence only, though it is doubtful whether this procedure is strictly within the provisions of the Code. But where the Court does not require any further information on the point, it would be merely a waste of time, money and labour, to issue notices, and send for records, and summon parties whom the Court does not wish to hear.

It must be remembered that the question of punishment is peculiarly a matter for the court. In revision the Crown has no right to seek to influence the Court on this question unless invited by the Court to do so. The Deputy Legal Remembrancer must have overlooked this, when he complained to the Acting Chief Justice that he had a great deal to say upon the subject in connection with the four sentences to which I have referred. The Court always hears him with patience, but in revision neither party has any right of audience, though no order must be made to the prejudice of the accused, unless he has had an opportunity of being heard. (Sections 439 and 440, Code of Criminal Procedure).

I am satisfied that the Court has jurisdiction to proceed as it did. If such procedure were not strictly within the provisions of the Code, provision for it ought to be made without delay. But, in my opinion, we have the power already. The powers of the Court in revision are almost unlimited. In particular it has all the powers conferred on a court of appeal by sections 423, 426, 427 and 428, Criminal Procedure Code. In an appeal under section 423, the Court has no power to enhance the sentence, but it may do so in the exercise of its revisional powers. If the Court has power to enhance the sentence in revision, surely it has power to modify or reduce it. The Court, when hearing an appeal, may alter the finding, and then under its revisional powers enhance the sentence. See the case of *In re Bali Reddi* (1). In the case of *Hridoy Mondal* v. *King-Emperor* (2), the accused had pleaded guilty to murder, and had been sentenced to transportation for life, and had appealed. The Court dismissed the appeal, because he had pleaded guilty and the minimum sentence had been passed, but, in exercise of its revisional powers, the Court altered the conviction to one under section 304 of the Indian Penal Code, and sentenced the appellant to seven years' rigorous imprisonment.

(1) (1913) I. L. R. 37 Mad. 119. (2) (1918) 22 C. W. N. xci.

Mc Nair J. stated as follows (1):—

> The facts of each case, and the orders made have been referred to in detail by my learned brother and it is unnecessary for me to analyse the exact procedure which was adopted, or the reasons which prompted us to make the orders. It may well be, as stated by my learned brother, that we intended to dismiss the appeals and to deal with the question of sentence under our powers of revision.
>
> The orders, as worded, purport to show that the appeals were admitted and the sentences reduced.

These observations of the learned Judges appear to show either a confusion of thought as to the provisions of the Code or an attempt to justify a practice which is inconsistent with its provisions. The jurisdiction of the Court in these matters is statutory, and the Court, however admirable its intentions, is not entitled to go outside these provisions and—in effect—to legislate for itself.

Chapter XXXI of the Code, as its title bears, is a complete code relating to appeals, and the appellate court referred to includes other courts than the High Court. Chapter XXXII, on the other hand, confers a special jurisdiction on the High Court only as regards references and revision.

On presentation of a petition of appeal in exercise of the statutory right conferred on the accused the appellate court is given a power of summary dismissal by section 421, "if it considers that there is no sufficient "ground for interfering," and their Lordships have difficulty in understanding the suggestion of Lort-Williams J. that the appeals could have been summarily dismissed in the present case, since each appeal asked for reduction of sentence, and the appellate court took the view that there was sufficient ground for interfering with the sentences. The terms of the section equally exclude the possibility of partial summary dismissal, *e.g.*, in so far as the conviction is appealed against. Failing summary dismissal, the provisions of sections 422 and 423 apply and, in their Lordships' opinion, the provisions as to notices in

(1) (1933) I. L. R. 61 Calc. 155, 165.

1935

The King-Emperor v. *Dahu Raut.*

section 422 and the provision as to sending for the record in section 423 are clearly peremptory, and there can be no room for revision at that stage. The words 'admitted' and 'admission' in reference to appeals which are not summarily dismissed, though not infrequently used in the courts in India, do not appear to their Lordships to be happily chosen. From their ordinary meaning they would imply that the appeal requires to be admitted at this stage, whereas the appellate courts are bound to deal with the appeal, and they can only do so when they have complied with the preliminary steps of giving the statutory notices under section 422, and sending for the record, which will enable the Court to deal with the appeal in accordance with the provisions of section 423. The powers conferred on the appellate court under section 423 appear to be as ample, as the High Court would have on revision under section 439, with the exception of the power to enhance the sentence, and if the appeal is before a High Court, and it is thought to be desirable, there is no reason why the accused should not be warned that, at the hearing of the petition, he may be called on to show cause why his sentence should not be enhanced. A similar course was taken in the case of *In re Bali Reddi* (1) which was referred to by Lort-Williams J., although the decision of the Madras High Court on the main point in that case has been doubted in the decision of this Board in *Kishan Singh* v. *King-Emperor* (2). In the other case referred to by the learned Judge, *Hridoy Mondal* v. *King-Emperor* (3), the High Court first dismissed the appeal and thereafter exercised their power of revision. [See also *Chunbidya* v. *King-Emperor* (4)].

Their Lordships are, therefore, of opinion that the procedure of the High Court in the four appeals here in question was in violation of their statutory duty in respect of their failure to comply with the provisions

(1) (1913) I. L. R. 37 Mad. 119.
(2) (1928) I. L.R. 50 All. 722; L. R. 55 I.A. 390.
(3) (1918) 22 C. W. N. cxi.
(4) (1934) I. L. R. 57 All, 156; L. R. 62 I A. 36.

of section 422 as to notice to the Crown, and the provisions of section 423 as to sending for the record.

Accordingly, their Lordships will humbly advise His Majesty that the appeals should be allowed, and that it should be declared that, upon the true construction of the Criminal Procedure Code, the appellate court is not entitled to dismiss an appeal summarily in terms of section 421 unless the Court is satisfied that there is no sufficient ground for interfering in accordance with the relief sought in the appeal, and that where the appeal is not dismissed summarily, the Court is bound, in order to the disposal of the appeal, to comply with the provisions of section 422 as to notice, and with the provisions of section 423 as to sending for the record, if such record is not already in Court. In respect that the appellant does not desire any order with regard to the reduction of the sentences, no further order is necessary.

Solicitor for appellant: *Solicitor, India Office.*

Solicitors for respondents: *Hardcastle, Sanders & Co.; Clarke, Rawlins & Co.; Watkins & Hunter.*

A.M.T.